

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

IN RE:
EDWARD DANIEL CRESPIN and
JANIS MARIE CRESPIN,
Debtor(s).

In Proceedings
Under Chapter 13

Bk. No.: 17-11234 TA

TRUSTEE'S MOTION TO APPROVE RETENTION OF
TRUSTEE'S FEES ON PRE-CONFIRMATION DISBURSEMENTS UNDER THE PLAN

COMES NOW, TIFFANY M. CORNEJO, Chapter 13 Trustee, files this Motion to Approve Retention of Trustee's Fees on Pre-confirmation Disbursements Under the Plan. In support of her Motion, the Trustee states as follows:

CASE HISTORY – CRESPIN

1. Debtors, Mr. and Mrs. Crespin (hereinafter referred to as "Debtors") filed for relief under Chapter 13 of Title 11 of the United States Code on 5/15/2017. Tiffany M. Cornejo was appointed as Chapter 13 Trustee. Debtors' attorney is Michael K. Daniels (hereinafter referred to as "Counsel").
2. The instant case was dismissed on 7/12/2018 (doc. #115); the Debtors' plan was not confirmed.
3. Counsel filed an Application for Compensation on 7/10/2018 (doc. 113); the deadline to object to the Application is 8/5/2018¹. As of the date of this Motion, no party has filed an objection to the Application.
4. Should this Application be granted, Counsel will be awarded \$14,328.32 in attorney's

1. The Trustee will concede, as of the date of this Motion, her issue is not ripe for litigation; however, as the Trustee has no objection to Crespin Counsel's Application, and does not foresee any other objections, this issue will be ripe by the time this matter is to be heard before this Court.

fee; the Trustee has received \$8,800.00, and retains same until the resolution of this matter.

SUBSTANCE OF MOTION

5. It is the common practice in this district that when a bankruptcy case is dismissed, pre-confirmation, debtor(s)' counsel is permitted a set amount of time to file an application for fees.
6. It should be noted that the standard language within the chapter 13 plan provides for payment of attorney's fee through the plan, (*see*, Part III. Administrative claims, section 3.1(b)(1) *of the plan for cases filed before 12/1/2017*).
7. Additionally, the funds the Trustee will disburse to Counsel are payments received by the Trustee pursuant to 11 U.S.C. § 1326(a)(1), and thus under the plan.
8. It is the present practice of the Chapter 13 Trustee to not retain the trustee's fee for all payments received by debtor(s), when their case is dismissed pre-confirmation².
9. The basis for this present practice is this Court's opinion in *In re Acevedo*, 497 B.R. 112 (D. N.M. 2013).
10. In *Acevedo*, this Court held that, read together, 11 U.S.C. § 1326(a)(2) and 28 U.S.C. § 586(e)(2) require the Trustee to return all plan payments to debtors (after deducting administrative expenses) without first deducting her percentage fee. *Id.* at 125.
11. The Trustee files this Motion seeking an Order that permits retention of the trustee's fee on pre-confirmation disbursement of attorney's fee.
12. In support of this, the Trustee notes 11 U.S.C. § 330(c), this section states,

(c) Unless the court orders otherwise, in a case under chapter 12 or 13 of this title the compensation paid to the trustee serving in the case shall not be less than \$5 per month from

2. See 11 U.S.C. § 586(b).

any distribution under the plan during the administration of the plan. (Emphasis added.)

13. The Trustee asserts that this section requires the Trustee to receive *and retain* a minimum amount for any distribution made under the administration of the plan. This section does not specify that the plan must be *confirmed*.

14. As the payment of attorney's fees are part of the chapter 13 plan, the Trustee should be entitled to retain the fees received for the funds distributed for attorney's fees pre-confirmation.

Wherefore, Trustee prays this Court for an Order granting the relief sought, and for all other relief this Court deems just and equitable.

Respectfully submitted,

/s/Tiffany M. Cornejo
TIFFANY M. CORNEJO, Trustee
Chapter 13 Standing Trustee
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Albuquerque, NM 87102
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was mailed to the following interested parties who have not been electronically notified this 2nd day of August, 201, with the correct postage prepaid and deposited in the U.S. Mail.

Edward Daniel Crespin
Janis Marie Crespin
2738 Camacho Rd SE
Rio Rancho, NM 87124

/s/ Tiffanie Kelly